

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|-------------------------------------|---------------------------|---|---|---------------------------------|
| Investigator: Craig Anderson | Team: Squad #10 | CCRB Case #: 201704713 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Monday, 06/05/2017 2:35 AM | Location of Incident: [REDACTED] | Precinct: 28 | 18 Mo. SOL 12/5/2018 | EO SOL 12/5/2018 | |
| Date/Time CV Reported Mon, 06/05/2017 4:00 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 06/12/2017 4:36 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------------|--------|--------|---------|
| 1. POM Konstantin Vithoukas | 07173 | 954410 | HWY 01 |
| 2. An officer | | | Unknown |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|------------------------|-----------|--------|----------|
| 1. POM Billy Valerio | 02511 | 932054 | 028 PCT |
| 2. POM Tony Piccirillo | 05571 | 962013 | 028 PCT |
| 3. POM Michael Vuoso | 12219 | 953543 | HBXQ RT |
| 4. POM Bayan Gbonoi | 06816 | 945751 | 026 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------------|--|-----------------------------|
| A.POM Konstantin Vithoukas | Discourtesy: At Henry Hudson Parkway and West 125th Street in Manhattan, Police Officer Konstantin Vithoukas spoke discourteously to § 87(2)(b) [REDACTED] | [REDACTED] |
| B.POM Konstantin Vithoukas | Force: At Henry Hudson Parkway and West 125th Street in Manhattan, Police Officer Konstantin Vithoukas struck § 87(2)(b) [REDACTED] with a radio. | [REDACTED] |
| C. An officer | Force: At § 87(2)(b) [REDACTED], an officer used physical force against § 87(2)(b) [REDACTED] | [REDACTED] |

Case Summary

Lieutenant John Gazzola of Highway District 1 reported this incident to IAB by phone on June 5, 2017, after § 87(2)(b) complained of being injured while in police custody (BR 01). The CCRB received this case on June 12, 2017. This investigation exceeded the 90-day benchmark due to difficulties in obtaining dashboard camera footage, explained in the “Potential Issues” section.

In the early morning of June 5, 2017, § 87(2)(b) was driving north on the Henry Hudson Parkway in Manhattan. His friend, § 87(2)(b) was in the front passenger seat and her two young children were in the back seat. They had just left a restaurant, where § 87(2)(b) drank one beer. § 87(2)(b) denied being intoxicated and denied committing any traffic violations.

At approximately 2:35 a.m., PO Michael Vuoso and PO Konstantin Vithoulkas of Highway District 1 pulled § 87(2)(b) over near the West 125th Street exit. The officers attempted to administer a breathalyzer test, but § 87(2)(b) did not produce enough breath to give a valid reading. The officers said they had to take him to the 28th Precinct stationhouse for additional testing. They handcuffed him and put him in the back seat of their unmarked vehicle. As they did this, PO Vithoulkas allegedly called § 87(2)(b) a “fucking asshole” and hit him twice in the right shin with a radio (**Allegations A and B**).

§ 87(2)(b) § 87(2)(g) § 87(2)(b) said he was transported directly to § 87(2)(b) in the unmarked vehicle, where an unidentified officer allegedly pulled him out of the vehicle by his handcuffs, causing pain to his arms (**Allegation C**). PO Vuoso and PO Vithoulkas said § 87(2)(b) was behaving aggressively at the scene of arrest, so they called for a vehicle with a cage to transport him to the 28th Precinct. PO Billy Valerio and PO Tony Piccirillo of the 28th Precinct responded in a cage vehicle and transported § 87(2)(b) to the stationhouse, where he collapsed in the parking lot, claiming pain to his leg. The officers called an ambulance, which transported § 87(2)(b) to § 87(2)(b) § 87(2)(b).

Staff at § 87(2)(b) examined § 87(2)(b)'s leg but found no significant injury. He was discharged, but officers brought him back to the hospital shortly afterward for a psychiatric evaluation, after he allegedly kicked PO Bayan Gbonoi of the 26th Precinct in the head while PO Gbonoi assisted PO Vuoso and PO Vithoulkas in putting § 87(2)(b) in their police vehicle.

§ 87(2)(b) was charged with assaulting an officer, driving while intoxicated, and numerous other violations (BR 02). § 87(2)(b) § 87(2)(b)

There is no known video footage of this incident.

Mediation, Civil and Criminal Histories

- § 87(2)(b)'s arrest rendered this case unsuitable for mediation.
- As of October 12, 2017, no Notice of Claim has been filed with the Comptroller's office in relation to this incident.

- § 87(2)(b) (BR 03).

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR 04).
- PO Vithoukas has been a member of the NYPD for four years. This is the first CCRB complaint against him.

Potential Issues

- § 87(2)(b) was unable to provide contact information for § 87(2)(b) during his interview § 87(2)(b). Attempts to contact her using information obtained through CLEAR, Lexis Nexis, and other searches were unsuccessful. Therefore, no witness testimony was available.
- A request for dashboard camera footage was submitted to IAB on June 21, 2017. On July 21, 2017, IAB staff informed the investigator that Highway District 1's CD burner was not functioning and the footage could not be provided until it was repaired. On September 27, 2017, after numerous follow-up inquiries, IAB informed the CCRB that Highway District 1's system was repaired, but they found no dashboard camera footage of this incident. Thus, no video footage of the incident was available.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b)'s physical descriptions of PO Vithoukas and PO Vuoso are insufficiently accurate for identification purposes (see BR 05 for his descriptions and BR 06 and 07 for the officers' pedigree information). However, he said that one officer approached his driver's side window and conducted the breathalyzer test while the other officer approached his passenger's side window. He alleged that the officer who had approached his passenger's side window later called him a "fucking asshole" and struck him with a radio. Although PO Vuoso and PO Vithoukas gave contradictory accounts of who conducted the breathalyzer test, both testifying that they conducted it themselves, they consistently stated that PO Vuoso approached § 87(2)(b)'s driver's side door while PO Vithoukas approached his passenger's side door. Given this, PO Vithoukas is more likely to be the subject officer described by § 87(2)(b) and **Allegations A and B** are pleaded against him.
- § 87(2)(b) alleged that after PO Vuoso and PO Vithoukas transported him to § 87(2)(b) in their unmarked vehicle, an officer he could not identify or describe pulled him out of the vehicle by his handcuffs, causing pain to his arms. § 87(2)(g) Therefore, **Allegation C** is pleaded against "an officer."

Allegations not pleaded

- **Vehicle Stop:** Because § 87(2)(b) was arrested for driving while intoxicated, no vehicle stop allegation is pleaded.

Allegation A – Discourtesy: At Henry Hudson Parkway and West 125th Street in

Manhattan, Police Officer Konstantin Vithoulkas spoke discourteously to § 87(2)(b)

Allegation B – Force: At Henry Hudson Parkway and West 125th Street in Manhattan,

Police Officer Konstantin Vithoulkas struck § 87(2)(b) with a radio.

In his CCRB interview, § 87(2)(b) said that he was driving § 87(2)(b) and her children home after leaving dinner, where he drank one beer (BR 05). He obeyed all traffic laws and denied being intoxicated. An unmarked police vehicle started following him on the Henry Hudson Parkway and pulled him over after he exited at West 125th Street.

An officer identified by the investigation as PO Vuoso approached § 87(2)(b)'s driver's side and another officer, identified as PO Vithoulkas, approached his passenger's side. PO Vuoso requested § 87(2)(b)'s license and registration, which he provided. PO Vuoso then said he smelled alcohol and asked § 87(2)(b) to step out of the vehicle. He administered a breathalyzer test, but the device would not give a reading; § 87(2)(b) believed this was due to a mechanical problem. § 87(2)(b) offered to walk in a straight line or take a different kind of test, but the officers said he had to go to the stationhouse and PO Vithoulkas put him in handcuffs.

§ 87(2)(b) asked why he had to go to the stationhouse, but remained respectful and got in the officer's vehicle after they told him to. As § 87(2)(b) stepped into the vehicle, PO Vithoulkas called him a "fucking asshole" and struck him twice in the right shin with a radio. A marked vehicle arrived at that time, but § 87(2)(b) did not interact with those officers. PO Vuoso and PO Vithoulkas transported § 87(2)(b) directly to § 87(2)(b) in their unmarked vehicle. § 87(2)(b) said he did not go to the stationhouse first and was not transported in an ambulance at any time.

PO Vithoulkas said that when he and PO Vuoso saw § 87(2)(b)'s vehicle, he was travelling at over 80 miles per hour, as measured by radar (BR 06). § 87(2)(b) also made unsafe lane changes and failed to signal lane changes. The officers pulled him over off the West 125th Street exit. § 87(2)(b) was initially compliant. PO Vithoulkas administered a horizontal gaze nystagmus test, which indicated that § 87(2)(b) was intoxicated. He attempted to administer a breathalyzer test, but § 87(2)(b) repeatedly failed to exhale strongly enough for a valid test. PO Vuoso then handcuffed § 87(2)(b) with the intention of taking him to the 28th Precinct stationhouse for additional testing. § 87(2)(b) became irate after being handcuffed and argued with the officers. They placed him in the back seat of their unmarked vehicle. Neither PO Vithoulkas nor PO Vuoso struck § 87(2)(b) with a radio or called him a "fucking asshole." Once inside the vehicle, § 87(2)(b) started kicking the windows, so the officers called for a vehicle with a cage to transport him. Two officers from the 28th Precinct, known to the investigation as PO Billy Valerio and PO Tony Piccirillo, responded to their request and drove § 87(2)(b) to the stationhouse.

PO Vithoulkas and PO Vuoso followed the 28th Precinct officers to the stationhouse. When they arrived, PO Vithoulkas saw § 87(2)(b)'s feet hanging out the door of the marked vehicle, with his upper body still on the back seat. PO Vithoulkas and the other officers tried to walk § 87(2)(b) into the stationhouse, but § 87(2)(b) refused, saying that his leg hurt. § 87(2)(b) said one of the officers struck him, but he was unable to specify which officer did this. After they were

unable to walk § 87(2)(b) inside the stationhouse, the officers called an ambulance, which transported § 87(2)(b) to § 87(2)(b).

PO Vuoso's testimony was generally consistent with PO Vithoulkas's, with the exception that PO Vuoso said he performed the intoxication tests himself (BR 07). PO Vuoso said he did not remember whether any officer called § 87(2)(b) a "fucking asshole." He noted that § 87(2)(b) was belligerent toward the officers after being handcuffed, saying, "Fuck you. You guys are pieces of shit. Fuck all of you." No officer struck § 87(2)(b) with a radio or used any force while putting him in the vehicle. After the sector vehicle transported § 87(2)(b) to the stationhouse, § 87(2)(b) accused the officers of breaking his leg and collapsed to the ground, leading them to call an ambulance.

PO Valerio said that when he and PO Piccirillo arrived at the scene of the vehicle stop, § 87(2)(b) was in the back seat of PO Vithoulkas and PO Vuoso's vehicle, kicking the windows (BR 08). He did not hear PO Vithoulkas or PO Vuoso call § 87(2)(b) a "fucking asshole" and did not see them use any force against him. PO Vithoulkas and PO Vuoso walked § 87(2)(b) to PO Valerio's vehicle. When PO Valerio started driving, § 87(2)(b) began kicking the vehicle's windows and yelling things such as, "Fuck you cops. You guys should be dead." PO Valerio drove quickly to the 28th Precinct stationhouse because he worried that § 87(2)(b) would break the window. He parked in the parking lot, exited the vehicle, and opened the rear door for § 87(2)(b). § 87(2)(b) was still kicking and kicked PO Valerio in the wrist. PO Valerio was not injured. He grabbed § 87(2)(b)'s legs to prevent him from kicking. Neither PO Valerio nor any other officer hit § 87(2)(b) with a radio, but § 87(2)(b) said to PO Valerio, "Ow ow, you hit me with a radio. I got you." PO Vithoulkas and PO Vuoso arrived at that time and PO Valerio backed away from § 87(2)(b). PO Vithoulkas and PO Vuoso took § 87(2)(b) out of the vehicle, after which he collapsed on the ground. PO Valerio went into the stationhouse shortly after this and had no further interaction with § 87(2)(b).

PO Piccirillo's testimony was generally consistent with PO Valerio's testimony (BR 11). He said that, when they arrived at the stationhouse, he opened the rear passenger's side door while PO Valerio opened the rear driver's side door. PO Piccirillo saw § 87(2)(b) kicking, but did not see PO Valerio or any other officer hit § 87(2)(b) with a radio.

The IAB Log indicates that § 87(2)(b) complained that PO Valerio hit him with a radio as he was taking him out of the vehicle at the 28th Precinct stationhouse, breaking his leg (BR 01). The IAB Log contains no allegations against PO Vithoulkas. A Threat, Resistance, or Injury Report was prepared, indicating that § 87(2)(b) kicked PO Valerio in the wrist and PO Valerio grabbed his legs to restrain him (BR 09).

The FDNY's Computer Aided Dispatch information indicates that an ambulance was dispatched to the 28th Precinct stationhouse to transport a sick prisoner. Records from § 87(2)(b) note that § 87(2)(b) complained of shin pain, but do not specify whether § 87(2)(b) told them the cause of the pain. The records describe no significant injuries to § 87(2)(b)'s shin and note that no x-ray was performed because there was "no concern for fracture." Medical staff had difficulty obtaining information about § 87(2)(b)'s complaints due to his "uncooperative behavior" (see Privileged Documents).

§ 87(2)(g), § 87(2)(b)

Allegation C – Force: At § 87(2)(b), an officer used physical force against § 87(2)(b)

§ 87(2)(b) said that after PO Vuoso and PO Vithoukas drove him to § 87(2)(b) in their unmarked vehicle, an officer or officers who he could not identify – but who were not PO Vuoso or PO Vithoukas – removed him from the unmarked vehicle by dragging him out by the handcuffs, causing pain. He collapsed in the hospital parking lot and the next thing he remembered was waking up in a hospital bed with an IV in his arm, having been sedated. When asked in his interview, § 87(2)(b) denied being involved in a physical altercation with any officer at the hospital.

PO Vithoukas and PO Vuoso both said that § 87(2)(b) was transported to § 87(2)(b) by ambulance – not in their police vehicle. PO Vuoso rode in the ambulance while PO Vithoukas followed in their vehicle. Medical staff at the hospital found no injury to § 87(2)(b)'s leg and discharged him. § 87(2)(b) became irate and refused to get inside their police vehicle to be transported back to the stationhouse. An officer from the 26th Precinct, PO Bayan Gbonoi, was nearby and tried to assist them in placing § 87(2)(b) in the vehicle, but § 87(2)(b) kicked PO Gbonoi in the head. This is documented in an Aided Report and PO Gbonoi's Line of Duty Injury Report (BR 10 and 11). After this, § 87(2)(b) was taken back inside § 87(2)(b) for a psychological evaluation. Both PO Vithoukas and PO Vuoso denied that he was pulled out of the vehicle by his handcuffs.

PO Valerio and PO Piccirillo did not accompany § 87(2)(b) to § 87(2)(b) and were not present for this part of the incident.

§ 87(2)(g), § 87(2)(b)

[Redacted text block containing approximately 18 lines of blacked-out content]

Squad: 10

| | | | |
|---------------|-----------------|-------|-------|
| Investigator: | _____ | _____ | _____ |
| | Signature | Print | Date |
| Squad Leader: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |
| Reviewer: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |